IN THE MATTER OF THE ONTARIO HUMAN RIGHTS CODE
S.O. 1981, c. 53, AS AMENDED

BETWEEN COMPLAINANTS

Harbhajan Singh Pandori and the Ontario Human Rights Commission

AND RESPONDENT

The Peel Board of Education

BEFORE

W. Gunther Plaut
Chair, Board of Inquiry

Conferences, hearings and executive sessions were held on Nov. 1, 15, 1989; February 5 to 8, March 26, 28, April 5, 6, 18, 19, May 15, June 12, 1990.

Appearances:

Anthony D. Griffin and Marilyn Ginsburg, for the Commission
Robert G. Keel and John L. Razulis, for the Respondent
Harbhajan Singh Pandori, in his own behalf.

I. THE ISSUE

1. Background

a. The case before this Board consists of two joint complaints against the Peel Board of Education,[1] launched on June 24 and December 21, 1988, respectively. The former was laid by Mr. Harbhajan Singh Pandori, a teacher, claiming infringement of his rights as a practising Sikh under ss. 4(1) and 8 of the Ontario *Human Rights Code* (S.O. 1981, c. 53, as amended; cited as "the *Code* "), and the latter by the Ontario Human Rights Commission ("the Commission"), alleging that s. 1, 8 and 10 had been offended by a policy of the Peel Board restricting the religious rights of Sikh students as well as teachers. The respondent denied that such infringement had taken place and that in fact it had legitimately exercised the rights given it by the Ontario *Education Act* (S.O. 1980, c. 129, as amended) and discharged the responsibilities arising therefrom.

Respondent applied to the Supreme Court of Ontario (Divisional Court) to quash the complaint laid by the Commission, and pleaded that for two reasons this Board of Inquiry had no jurisdiction in their case: that one, education was not one of the services covered by the *Code*, and that two, education was under the jurisdiction of the *Education Act*. On March 9, 1990 the Court rejected the respondent's application, stating that education constituted a "service" within the meaning of s. 1 of the *Code* and, further, that the *Code* had precedence over the *Education Act* . The Peel Board decided not to appeal, and the hearings before this Board of Inquiry resumed to consider the full range of the complaints.

The hearings were also joined by the Federation of Sikh Societies of Canada who were admitted as interveners and who in time presented this Board with a written submission (cited as Interv.).

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[1] A complaint originally launched against Mr. Mike Miller was subsequently withdrawn (Memorandum of Agreement, March 26, 1990, Exhibit 25, Evidence VI 5-6).

b.. Seen from the complainants' perspective, the issue is the right of a Sikh to wear his/her full religious accoutrements, which include a kirpan,[2] and to do so at all times and anywhere, including within school precincts. If this were proscribed, practising Sikhs, if of school age, would be denied a public school education, and if accredited as teachers, would be barred from pursuing the profession of their choice.

Seen from the respondent's perspective, the issue is the right and duty of the Peel Board to maintain proper discipline in the schools, comprising the right to ban all weapons from school properties. In doing so it has defined the kirpan, which has the appearance of a dagger, as a weapon and has therefore prohibited its wearing on school grounds. Denying the Board of Education the right to set a weapons policy could infringe seriously upon its ability to regulate the schools in Peel Region.

We deal, then, with a case in which two rights collide:

(i) the right of each person to a free and untrammeled exercise of religion, and

(ii) the right of the Peel Board to set proper policies aimed at protecting all who come within its purview.

The Peel Board of Education bans all weapons from its schools and specifically identifies kirpans as weapons. However, baptised (Khalsa[3]) Sikhs who must always have a kirpan on their persons, insist (and Sikh clerical authorities support this view) that a kirpan is not a weapon but a spiritual instrument and only appears as a weapon and therefore falls outside legitimate school concerns.

c. Since I was the target of numerous missives from members of the public I felt constrained to enter a statement into the record of the hearings of March 26 setting forth the function and nature of a Board of Inquiry as an independent body. I reiterated that my decision would be based solely on what was brought before me during these hearings and on the laws which govern them. Outsiders wishing to be heard could approach the parties to the case at bar in order to have

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[2] The meaning of kirpan will be examined in some detail *infra*.

[3] Khalsa means "the pure," "the elect," "the leaders." (Evidence of Dr. Spellman, II 63)

them bring their concerns before me, the adjudicant, and such concerns would in that way become part of the record and be carefully considered. Or they might apply for intervener status if their interests so warranted.

My sole task is to interpret the law as it stands in the light of the evidence brought before me, cognizant, of course, of the role of courts and boards of inquiry in shaping the contents of public standards, as reflected in the use of such terms in the *Code* as "reasonable," "undue hardship,'" and "safety."

2. The Kirpan

a. John W. Spellman, Ph.D., professor at the University of Windsor, a teacher of comparative religion and a renowned student of Sikhism, testified at the hearings and was accepted as an expert on the subject.

He explained that Sikhism is a religion founded by Guru Nanak in the 15th century and developed further by nine succeeding Gurus, ending with Gobind Singh.[4] But, he said , describing Sikhism merely as a "religion" does not do it full justice.

> Sikhism is certainly a religion, but it is far more than a religion. It is also a people. It is, by some, considered to be a nation. It is certainly a culture. It is a creed. It is also an ancestry. Sikhism is all of these things because like Judaism and Hinduism and unlike Buddhism or Christianity, it is significantly influenced by the practice of a people, rather than focusing primarily on a specific teacher, though teachers are obviously central. (Evidence ["Ev."] II 51)

b. Sikhs are concentrated in India and especially in the Punjab, but many have migrated to other parts of the world. It is estimated that presently about a quarter million Sikhs live in Canada. Of these, more than ten percent are Khalsa, that is to say, they have gone through the ceremony of *Amrit Dhari* , which is often referred to as a form of baptism.

Since assuming certain obligations for life requires a mature understanding of the religion, there is no particular age when Sikhs may choose to become

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[4] A brief survey of Sikh history was also provided by Interv. 1-4.

Khalsa. They may be only ten or twelve years old or even younger, though this is rare; they will more likely make the decision in their later teens or as adults. Men and women alike may assume the obligations.

c. Once they become Khalsa they have many duties, such as the regular recital of prayers, tithing, abstinence from tobacco, alcohol and other stimulants. Also, they are now obligated never to part from the *panch kakar* which they must always have on their bodies, an obligation instituted by the tenth Guru, Gobind Singh. In Canada these *panch kakar* are generally known as the five K's. Dr. Spellman explained them as follows:

Kesha (unshorn hair), represents the inviolability of the human body; "the complete man who is physically and spiritually the image of God is conceived in Sikh scriptures as a man with hair and turban on his head." (Ev. II 75)

Kanga (a comb) is needed to remove dead hair. "It represents hygiene [...] ridding oneself of impurities and what is morally undesirable." (Ev. II 81)

Kara (a metal bracelet), "This is the symbol of perfection [...] a reminder of the wearer to be mindful of his role of spiritual aspirant and useful citizen [...] The kara is also on the right hand which is the hand [with which] most people perform their deeds [and] is a constant reminder to perform good deeds." (Ev. II 82)

Kach (or kachera, special drawers) is a symbol of restraint of passion, of chastity, and a constant reminder of the prohibition of adultery, both in lusting and in deed. (Ev. II 85-86)

Kirpan. The expert witness insisted that all translations of the word, such as knife, sword or dagger, are misleading, and that it would be best to leave it untranslated.[5] While the kirpan arose out of a particular culture and had at one time the function of a sword, it long ago lost this aspect and has become completely spiritualized. It now speaks of law and morality, justice and order and has become "an instrument of the divine itself." (Ev. II 95)

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[5] The common dictionary definitions and derivations are disputed. Thus it is characterised as a sword or dagger or, in Interv. 6, as deriving from a word meaning mercy, grace or magnanimity.

Dr. Spellman compared the sword-like appearance of the kirpan to the mace, which was used in times of war as a club and which from that point of view is a weapon, but which long ago became a symbol of power, order and dignity.

The kirpan, like the kara, must be made of iron, which nowadays is cast as steel. Dr. Spellman emphasized that the use of this material was essential for the two symbols. Since iron was widely available even to the poor, it assumed the aspect of commonality, simplicity and equality. (Ev. II 83-84)

d. While all Sikhs may, and are in fact encouraged, to wear the five K's, baptised or Khalsa Sikhs must wear them, lest they break their holy vows and become *patit*, persons who have fallen away from their religious obligation.

> The five K's become central in establishing [Sikh] identity. They become physically, visibly central, but they also become spiritually central, because [...] the forms of identification not only remind others of the identity of Sikhs, they also remind Sikhs of their identity, and in that sense they become a form of inward and outward identification and recognition. (Ev. II 78)

e. The kirpan, as one of the five K's, is thus far more than a religious adornment. Mandated to be worn always, it is an integral part of a Khalsa Sikh's person and cannot be properly compared with a cross which a Christian might choose to wear. Not wearing the kirpan at any time, day or night, constitutes a grievous transgression for a Khalsa Sikh.

f. The witness produced for the Board of Inquiry an array of differently sized kirpans. They are in appearance like special forms of daggers, are customarily encased in sheaths or scabbards, curved near the tip, which gives them an old-fashioned, distinctly ceremonial look, and something like miniature scimitars. They do not appear as knives in the ordinary sense of that word, though they could be used as such and, the witness said, are so used on ceremonial occasions when the food is blessed. The smallest kirpan introduced as an exhibit had a blade of 3 inches, while the largest kirpans (which were not exhibited) are said to look like ceremonial swords. (Exhibits 5 to 10 are photographs of the full range of kirpans which were shown at the hearings.) Intervener recommends that

I accept a 4-inch blade as a "reasonable representation of the kirpan emblem." (Interv. 18)[6]

According to Dr. Spellman, determination of the size is left to the wearer; a child or other small person would choose a smaller kirpan, a larger person might choose a larger one.[7] There is no absolute minimum size which a kirpan must have, though Dr. Spellman averred that miniturization defeats the purpose of the symbol. Intervener, however, suggested that for school purposes a 3-inch blade, with an overall kirpan length of 7 inches, be permitted for all students except the largest. (Interv. 19)

The kirpan is attached to a strap called *guthra* and fastened to it in a manner which holds it fairly securely in place but allows it to be removed without much trouble. As already noted, the kirpan must be made of steel; a wooden or plastic blade would not qualify. (Ev. II 98)

g. Dr. Spellman was at great pains to characterize Khalsa Sikhs in Canada as a thoroughly trustworthy and altogether admirable group who try to live by and cherish the high moral and ethical standards of their faith. Futhermore, they are abstemious and notably resistant to the drug culture. He emphasized that they have had an exemplary record of respecting the law of the land and that in a hundred years of residence there have only been three or four cases of inappropriate use of the kirpan.

> "If it is evidence for anything, I think it is evidence for the extraordinary restraint and self-control that this community has shown in the use of this symbol in this country." (Ev. III 177)

h. In the cross-examination the opinions of certain Sikh writers and the experiences of other Sikhs were brought to the attention of the witness, opinions and experiences which were divergent from the standards Dr. Spellman had enunciated.

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[6] But Intervener went on to reserve the right to fight for and obtain the right to wear kirpans without any restriction of size. (*ibid.*)

[7] Interv. 13 supported this view: " A Sikh has the right to wear any size of kirpan, and we in the community would like it to be so."

The witness averred that while there were certain variations or forms of Sikhism, they had no institutionalized form, as did the Chrsitian denominations or branches of Judaism. Orthodoxy, that is to say the Khalsa, is the standard, though again, within this orthodoxy, there are varying standards of strictness.

> Yes, there are...those who insist on greater strictness. So, for example...the Khalsa Sikh who was going to Los Angeles [by plane and was asked to surrender his kirpan for the duration of the trip] a fundamentalist might take the position you cannot do it...under any circumstances...That fundamentalist position does not dominate Sikhism, either in India or in Canada, though it exists. (Ev. III 91-94).

h. There was finally the question of whether a kirpan could be stitched to the guthra in such a way that it could not come out and therefore render the kirpan inoperable as a potential weapon. Dr. Spellman held that such a procedure would infringe the integrity of the kirpan and therefore be objectionable.[8]

When faced with the opinion of Mr. Singh Bal, speaking on behalf of the Ontario Council of Sikhs who, though aware that such stitching was not proper practice, were nonetheless ready to accommodate the Peel Board to this extent, Dr. Spellman indicated that Mr. Bal was most likely not Khalsa, and besides, that the Council was not representative of all Sikhs. There was in fact no such representative organization in Ontario or Canada. (Ev. III 147-148)

i. Dr. Spellman's two-day testimony left me with the understanding that, with the exception of basic Khalsa obligations – such as having the five K's on one's person – certain details of religious behaviour were interpreted more strictly by some and less strictly by others, and that many decisions lay with the conscience of the faithful. The witness himself, however, represented what he

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[8] This too had the strong support of Intervener, in part because the kirpan might have to be used for religious ceremonies and at times taken out of its housing, and because it has to be cleaned every 3–4 days. "So, in view of the above, if the handle or the kirpan itself is sewn down or stitched in such a away that it cannot be removed without breaking the stitches and there is a need of machining or some needle and thread operation to secure it again, this could not be permitted. Also, and this is important, the spirit and intent of the wearing of the kirpan is deemed to have been scuttled and violated. This definitely is not accepted or acceptable." (Interv. 13)

called "standard" (or fundamentalist) behaviour as the guide to follow (and so did the Intervener).

(i) What size of kirpan a Khalsa Sikh might choose to wear was his/her personal choice;

(ii) While "standard" Sikhism does not approve of miniaturization of the kirpan, some Sikhs might consider a miniature kirpan an acceptable size;

(iii) Some Khalsa Sikhs will surrender their kirpan when traveling on airplanes, considering this is a situation of compulsion;

(iv) Dr. Spellman doubted that, as was related, a Khalsa Sikh could have received permission from the *panch pyari* [9] at a certain *gurdwara* [10] to surrender his kirpan to the security police at an airport and stow it with his luggage. (Ev. III 141-142)

(v) Whether to wear the kirpan inside or outside of one's clothing is a personal choice;

(vi) There is no one Sikh organization that speaks for all members of the community in Ontario or Canada. (Ev. III 148)

j. On December 18, 1989, Ms. Marilyn Ginsburg, Counsel for the Commission, addressed a letter to the Shiromani Gurdwara Parbandhak Committee ("S.G.P.C.") in Amitsrar, India, which is considered the supreme religious instance of the Sikh faith. Ms. Ginsburg asked a series of questions concerning the kirpan and received an answer, dated February 19, 1990. The response arrived during the hearings and by agreement was entered as Exhibit 24. Respondent counsel's agreement emphasized, however, that notwithstanding the importance of the S.G.P.C.'s opinions they were not necessarily followed by all Sikhs in Canada, and that it was with this understanding that the letter was admitted as an Exhibit.

The S.G.P.C. advised as follows:

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[9] The "five beloved," who are the spiritual leaders of a congregation.
[10] The local congregation or temple.

(i) No definite size of the Kirpan has been fixed, although it should not be reduced to a mere formal signe. A one foot kirpan is usual.

(ii) Children's kirpans will usually be smaller than those of adults.

(iii) No baptised Sikh may remove his/her kirpan under any circumstances.

(iv) There is no religious injunction that the kirpan must be worn in plain view. "It should be worn sensibly and not shyly, certainly without any sense of concealment."

(v) The kirpan should be easily removable from the sheath. It must not be sewn, though the handle may be tied down.

(vi) A baptised Sikh is not to use the kirpan in anger as a weapon; if he/she does so, that person is guilty of misconduct. In case of any such complaint the panch pyari will summon the person, judge him/her and pronounce the penalty. Non-appearance or insubordination may result in religious excommunication, following which the observant community would likely ostracise the person concerned.

3. Uncontested Facts.

The respondent did not dispute that the kirpan has important spiritual significance for Sikhs, but averred that nonetheless its appearance makes it a weapon in the eyes of other beholders and therefore fits the meaning of the Board of Education's general policy, which prohibits all weapons on school property.

The relevant policy of the Peel Board in this regard was presented to me as an agreed statement of facts (Exhibit 2). It comprised the following matters:.

a. General.

The Peel Board of Education is a public Board of Education which provides elementary and secondary public school education pursuant to and in accordance with the provisions of the *Education Act* , and the trustees of the Board are

elected pursuant to the provisions of that *Act* and the *Municipal Elections Act of Ontario* (R.S.O. 1980, c. 308, as amended).

Ss. 235 and 236 of the *Education Act* list among the duties of teachers and principals "to maintain proper order and discipline." S. 236(m) states:

> [It is the duty of a principal of a school in addition to his duties as a teacher] subject to an appeal to the Board, to refuse to admit to the school or classroom a person whose presence in the school or classroom would in his judgment be detrimental to the physical or mental well-being of the pupils.

S. 22 of the Act deals with suspensions, appeals and expulsions.

b. Discipline Policy.

Since 1976 the Board has maintained an Operating Procedure which prohibits weapons on school grounds[11] and in 1979 the Board developed a discipline policy. Both were instituted in response to increased violence in Peel schools, and both remain in effect. In September 1987 the Board enlarged its discipline policy by including specific prohibitions against weapons and adding a requirement that this information be communicated to parents, students, and staff. This was known as Policy #48.

In the spring of 1988, a Sikh student who had recently become Khalsa began wearing a kirpan to school. After prolonged discussions and negotiations with the affected family as well as various Sikh groups, the Peel Board, on December 13, decided in an 18 to 3 vote to amend the existing Policy #48. Item 13 had stated:

> The Board shall require each principal to include a statement in the school's discipline policy to communicate to parents, students and staff, that the possession and/or display of weapons on school property (buildings and land/) may result in a recommendation being presented to the Board of Education for expulsion of that student.

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[11] Cause for the adoption of this policy was a terrifying incident which resulted in the death of one teacher and two students.

Now a new item 14 was added:

In keeping with item 13 above, students will not be allowed to possess weapons of any nature, including kirpans, on school property. Baptized Sikh students who wear kirpans will be subject to the following regulations:

(i) If the kirpan is left at home, students are welcomed and encouraged to participate in all school activities.

(ii) A Sikh student may attend school wearing a symbolic representation of the kirpan provided that symbolic representation does not involve a metal blade that could be used as a weapon.

(iii) It is a requirement of the Peel Board of Education that these regulations be communicated annually to all students and to new students upon registration. (Exhibit 29)

This new Policy of the Board was supported by the Principals and Vice-Principals in the Peel Board of Education.

II. SUMMARY OF OTHER TESTIMONY.

This Board of Inquiry was not faced with disputed questions of fact or the credibility of witnesses and their testimony. What the witnesses (save for Dr. Spellman) presented to this Board was a recital of personal experiences, of meetings held and resolutions passed, of surveys and trends, all buttressed by 74 exhibits. The veracity of any of the witnesses' statements was never in question. All delivered their testimony with a knowledge of their assigned tasks and spoke clearly to the particular issues before them.

With certain exceptions, the testimony proffered was important for setting the framework of the dispute. In recounting the essential parts of the testimony brought before me I will present them in the order best suited for a logical exposition of the issues, and not necessarily in the order in which the witnesses appeared at the hearings.

1. Mr. Pandori, complainant.

Educated in Canada, a Sikh with a B.A. degree from the University of Toronto and an M.A. degree from McGill, Mr. Pandori taught for the Peel Board of Education: at night school from 1983 to 1987, and during the day from 1987 to 1988 as a supply teacher. In the summer of 1987 he became Khalsa and wore the 5 K's in accordance with his vows. (Ev. IV 117) He encountered no problems until, in 1988, he was informed by Mr. Michael Miller that the Peel Board had established a policy defining the kirpan as a weapon and had prohibited its wearing on school grounds. (Ev. IV 128)[12]

Mr. Pandori decided that, as a Khalsa Sikh, he could therefore no longer teach in the region and subsequently laid a charge against the Peel Board under the *Code*. He made it clear, however, that he sought neither special not general damages; he only wished to have the Board of Inquiry restore him to his right to exercise his religion peacefully and without interference.

The complainant is now a supply teacher for the Etobicoke Board of Education., which has no express "kirpan policy." He advises the principal of the school that he is a Khalsa Sikh and wears the 5 K's, and has not encountered any difficulties. Thus Mr. Pandori is able to wear his kirpan at all times. While in school, he places it under his clothing, between two undershirts, so that, should someone attack him and try to take his kirpan, it would not be readily located. At other times, and especially in the gurdwara, he carries the kirpan on the outside of his clothing.

The witness testified that as a Khalsa he is never separated from his kirpan, not at night nor when he takes a shower. The only exceptions to this constancy occurred during three air trips when he was forced to surrender the kirpan. When he consulted about this dilemma with the panch pyari he was told to pray and to make atonement for his violation, in the hope that others would be spared similar indignity.

Mr. Pandori, with great bitterness, informed this Board of the reaction of his young daughter, who had come home from school (then in Peel region) and

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[12] Mr. Miller later testified briefly as to his involvement, but no new facts were brought forward.

brought with her a copy of the *Handbook* which had been distributed to all students. (This guide book, which is to acquaint families in the region with the school system and its workings, specifically mentions that the Sikh kirpan is prohibited in all schools.) The child felt that the *Handbook,* by its mention of Sikhs, demeaned her badly. (Ev. IV 151)

In the witness's mind, the procedures of the Peel Board had little to do with safety or other considerations. Rather, this was but another aspect of a pervasive majoritarian attitude which he (like his daughter) characterized as racially motivated. Sikhs are readily identifiable by their habit, and this provokes a cluster of anxieties and prejudices. This experience is not confined to Sikhs, of course, many other visible and even non-visible minorities have been subjected to discrimination of all sorts, and it is precisely to this that the *Code* directs itself.

The impact which the Peel policy had on the Pandori family was clearly profound. The kirpan is not just another issue to be dealt with in a new land, it touches the deepest layers of faith and emotion. In the Pandori family, rejection of the kirpan was clearly a question testing their integrity and humanity.

2. David Weldon, witness for the respondent.

Mr.. Weldon, B.Sc., M.Ed., superintendent of operations for the Peel Board, handled day-to-day affairs for this, the largest school Board in the nation which, in January 1990, was responsible for nearly 90,000 students, 5,740 teachers, and a staff of nearly 2,000 in 160 schools. As already noted, the Peel Board publishes an *Information Handbook* for its students which acquaints them with matters they need to know. In its 1990-91 issue (Exhibit 30)[13] the Board, in pursuance of its Policy # 48, includes a section entitled Discipline Policy (pp. 22-24), which notes the prohibiton of weapons and refers specifically to the kirpan (see *supra*, I 3, "Uncontested Facts").

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[13] The 1990-1991 edition for secondary schools (and not the 1988-89 edition) was introduced at the hearings.

Mr. Weldon recounted in some detail the meetings he attended which were designed to arrive at some arrangement by which baptised Sikhs could continue in the Peel schools. The question of wearing replicas, or securing the kirpan so it could not be extracted from the sheath, fa'tered on the insistence of some Sikh representatives that this was not permissible in Sikh tradition, while apparently other Sikhs thought that a compromise in this respect was possible. No accommodation could be reached; one side wanting the disabling of what, in the eyes of non-Sikhs, was a potential weapon, while the other could not agree that this was possible. The witness testified that he would have recommended any suitable arrangement to the Peel Board. (Ev. VI 40 et seq.; Exhibits 18 to 22) Eventually the above-noted policy was adopted. (Minutes of the December 18, 1988 Board meeting are found in Exhibit 36.)

At this point, there were in Peel one baptised Sikh teacher (the complainant) and two students who sought the right to wear the kirpan and were affected by the ruling.[14] The students were Paramvir Singh and Sukhdev Hundal, the former in elementary and the latter in secondary school. The application of the Board's policy was delayed until meetings could be held with the parents of the two students. However, the discussions were not fruitful.

Thereupon private instruction was arranged for Sukhdev Hundal in the principal's office (where he could continue to wear the kirpan) and a special teacher was assigned to help him in his work. (Ev. VI 68) However, after a while the student found the situation intolerable and returned to class, wearing his kirpan, whereupon he was suspended for insubordination. He is now attending school in Etobicoke.

Paramvir Singh was withdrawn from his school, his parents having decided to educate him at home "till his right is restored." (Letter by Jasbir Singh to the Brandon Gate Public School, dated January 17, 1989; Exhibit 39).

Mr. Weldon then turned to an analysis of violence that had taken place in the school system during 1988, and especially to incidents involving knives (Vi 85 et seq.; Exhibits 40 to 43). The latter occurrences were increasing and the public had become more aware of them. The witness was convinced that there was also

[14] A third student had moved away.

a presence of undiscovered weapons, but no body searches or electronic detectors have been introduced. It was the principals' responsibility to deal with all incidents and report serious breaches to Mr. Weldon.

The impact of such violence is large, the witness testified, and the emotional impact on the student body, the teachers and the parents is great. Each incident requires up to a week of staff time, and especially so when police presence is required.

On March 23, 1990 the witness received a letter from the Ontario Secondary School Teachers' Federation, District 10, Region of Peel ("OSSTF"), which affirmed support for Sikhs and other minorities in their quest for human rights and equal treatment, yet which supported the Peel Board's kirpan policy.

Mr. Weldon was aware that the neighbouring school boards of North York and Etobicoke have no weapons policy that would prohibit kirpans. He also admitted that he had not brought this information to the attention of the Peel Board prior to its December 13 meeting and that it was simply not explored in depth. (Ev. VI 136) He felt, however, that North York's verification procedures were inadequate. The testimony did not elicit reasons why the Peel Board's policy should be different from that of its neighbours or, for that matter, vice versa.

According to the witness, Peel's policy was pro-active and not simply reactive and it was developed in good faith. (Ev. VI 105, 109) The bottom line was the enhancement of safety:

> I think also the presence [of the kirpan]...would create in the minds of some staff and some students, also a degree of unease or hardship by virtue of the fact that this item was present in the school or in the classroom. (Ev. VI 109)

In cross-examination Mr. Weldon agreed the policy had resulted in differential treatment of Sikh students, and that the isolation of Sukhdev Hundal from the other students was detrimental to his social development and clearly undesirable, though it might actually have advanced his academic levels.

The witness denied that the introduction of the policy was designed as a sop to fearful parents (Ev. VI 169). Rather, he averred, the policy was well

publicized because there was a rising climate of violence along with a phenomenal rise in the number of students. To be sure, safety policies were policies of prediction and, to his knowledge, there had been no kirpan-related incidents in North York or Etobicoke. Still, the absence of kirpans was clearly a reduction of risks (however small it might be) and that was the objective. He further stated that he believed that teachers wearing kirpans constituted a lesser risk than students wearing them.

No testimony was led to explain why, though the boards in Toronto, Scarborough, North York and Etobicoke had no specific kirpan policy, the Peel Board found it necessary to introduce one. Clearly, there were different perceptions of what constituted safety, but why these differences were present was not explored. In the formulation of Policy # 48, as amended, they appeared to have played no role.

3. Messrs. Inderjit S. Mehat, Roy Hardie, Ralph Prentice,

witnesses for the Commission.

Messrs. Mehat, Hardie and Prentice were called by the Commission to explain the kirpan experience in School District no. 36 (Surrey) in British Columbia, and in the school boards of North York and Etobicoke in Ontario.

Mr. Mehat, B.Ed., M.Ed., who is a Sikh but not Khalsa, works as a multicultural officer for the Ministry of Education in B.C. He related the following facts and experiences, all relating to the Surrey Board.

Students of East Indian background form about 6 to 8 percent of the student population of 40,000. (Ev. IV 21) He estimated the majority of Indo-Canadians to be Sikhs and their number in the neighbourhood of 400. Among

these are 200 Khalsa, the largest such group in Canada. They are located primarily in the northern part of Surrey.

Three occurrences involving a kirpan were brought to his attention. In one, a child who was wearing a kirpan was allowed to stay in school after it became clear he was a baptised Sikh. In the second, a primary student was sent home, but returned after his parents decided that he was too young to have full religious responsibility. The third was a meeting with a delegation of parents of sixth to eighth grade students who objected to Sikhs wearing kirpans in school, but their fears were stilled and the matter was thus resolved.

Concerns had been raised about potential and actual violence. Certain youth gangs were active, some of them of Asian origin, but kirpans never figured in any incident. (Ev. IV 37) The school Board has been considering a weapons policy, but the kirpan has not figured in the discussion and is banned nowhere in B.C. This also applies to teachers and reflects the Surrey board's policy on multiculturalism, racism and human rights:

> The Board endorses the concept of active and positive multiculturalism, and encourages schools to offer programs which promote respect for the human rights of minority groups, and which help pupils appreciate other cultural heritages.
>
> All District programs and operations will protect the rights of all individuals and will comply fully with the statutory requirements and provisions of the *Criminal Code of Canada*, our nation's *Charter of Rights*, and the *Human Rights Code* and the *School Act of British Columbia*. (Exhibit 16)

This may be compared to the Peel Board's Statement of Policy on the same subject:

> The Peel Board of Education is committed to a philosophy or respect for the racial, ethnic and cultural plurality of our society, and the objective of this policy is to ensure that equal rights and opportunities exist for all staff and students throughout the Peel Board. (Exhibit 17)

Then follow eleven paragraphs which delineate how this policy is to be put unto effect. In comparing the two boards' statements it became evident that both enunciate the same ideals and that, if anything, the Peel policy is worded more strongly. Clearly, then, with both boards having the same high objectives, their perceptions differ only on how the principles should be translated into practice when faced with a specific issue, such as the wearing of the kirpan. Perhaps, the witness opined, fears of the unknown and hard-to-dislodge sterotypizations ("Sikhs are liars and violent") played a role in Peel. They might be alleviated if there were Sikhs in the system, both students and teachers, who could function as role models. (Ev. IV 84)

The witness expressed support for the placing of certain limitations on the wearing of a kirpan, such as straps that would make the removal of the kirpan from its sheath difficult but not impossible. "I think those are appropriate, reasonable accommodations in themselves," he suggested. (*ibid.*)

Although there are far more Khalsa Sikhs in Surrey than in Peel, the presence of fully accoutred Sikhs has not given rise to kirpan-related violence in Surrey.

Yet the Peel Board, strongly affirming the same multicultural ideals, has a different view of the same issue. This contrast between the Surrey and Peel boards is noteworthy, but in essential parts it was not conclusive. No statistics on weapons-related violence in B.C. schools were led that would allow for a meaningful comparison. In Mr. Mehat's view, the difference probably related to the different compositions and experiences of the two school populations. For this purpose he drew on observations by Barb Thomas, a writer on racial problems[15] and extrapolated:

> We grow up in a society interacting with one another, accepting common norms, and as a result of of that commonality of experiences there is a commonality of results of our actions. [...] If we have stereotypes and prejudices and perceptions that are culturally determined, related to

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[15] Barb Thomas, "Principles of Anti-racist Education," *Currents*, Fall 1984, pp. 20 et seq., (Exhibit 18); *idem*, *Combatting Racism in the Workplace*, Toronto: Cross-Cultural Communications Centre, 1983 (Exhibit 19).

> the kirpan, then we are going to take action which will likely develop biased results because of our stereotypes and our perceptions and cultural orientations. [...] If they are shared within a mono-cultural perspective, that mono-cultural perspective will still translate into discrimination and systemic racism.
>
> We can decrease this systemic racism by utilizing a very multi-cultural perspective in terms of the issue of the kirpan, and that is something Barb [Thomas] talks about. (Ev. IV 66-68)

Mr. Mehat's final conclusion was that the issue of kirpans in schools will be seen differently in different environments. He seemed to feel that the treatment of Sikh religious needs by the Peel Board was not just a matter of safety but was culturally motivated and may even have had had stereotypical or racist judgements built into it. In making these observations Mr. Mehat was clearly speculating; neither he nor Mr. Pandori (who had also used the term "racist") attempted to offer proof that prejudice had indeed been a factor in the formulation of the amended Policy # 48.

Mr Hardie is the Superintendent of the Student, Community and Administrative Services Department of the North York Board of Education. He related that in the 1987/88 school year the matter of the kirpan first surfaced, in part because the ongoing discussions in Peel raised questions in North York as well.

He initiated a dialogue between the school system and Mr. T. Sher Singh, Director of the Macauliffe Institute of Sikh Studies, to determine the best way to deal with the question of Sikh students wearing their kirpans to school. (He was aware that Mr. Singh was not Khalsa; Ev. IV 185-186.)

Subsequently, in September 1988 (some three months prior to the amendment of Policy # 48 by Peel), he issued a memo to all principals and vice-principals. It described the background of Sikhism and explained that today the kirpan has a purely spiritual and non-martial connotation.

If a request was received, or if a student was known to wear a kirpan, the memo recommended various procedures. The principal was to be notified and a verification that the student is a baptised Sikh was to be obtained from the

Macauliffe Institute. The principal then would decide to grant or deny permission to wear the kirpan, assemble all relevant documents for filing, and notify staff and superiors in the system. If permission was granted, program modification, where necessary, would be implemented. (Thus, the kirpan-wearing student might be excused from contact sports, such as wrestling.)

> Each situation should be handled on an individual basis and should be concerned with the fundamental issues of
>
> - safety for all
>
> - respect for human rights
>
> The principal may remove the privilege of wearing the Kirpan in the school, given any violation of safety procedures or inappropriate use of the Kirpan. (Exhibit 14)

Examination-in-chief established that no denial of a kirpan was recorded in North York schools. It was estimated that altogether there were no more than five to ten Khalsa Sikh students in the system. The witness stated that if non-Sikh students wished to wear a kirpan he would find out whether the applicants were serious in their desire to become Khalsa and then make his decision.

This memo was issued as a Procedure and not as a Trustees' policy, to enable the Board to deal flexibly with new developments and to conform with the Board's race and ethnic relations policy, which is an inclusive policy requiring the honouring of religious observance.

Cross-examination established that the procedure had not been submitted to the Trustees; that, while principals and vice-principals were consulted, the OSSTF and the elementary school boards' association were not. The witness was aware that in March 1989 a resolution by the Ontario Public School Boards' Association (OPSBA) endorsing the Peel policy was passed (Ev. IV 181; the resolution was filed as Exhibit 20):

> The OPSBA goes on record as supporting the position of the Peel Board of Education that although kirpans worn by baptized Sikhs have religious significance, they have the potential to be used as weapons and

> that students who insist on wearing kirpans should be excluded from school, according to the Board policy, and be provided with an acceptable program of home instruction.

In sum, Mr. Hardie was satisfied, and his superiors obviously agreed with him, that there was reliable Sikh opinion to support his program, that it worked satisfactorily and safely, and that there was therefore no need to engage in further studies, or for North York to emulate the example of Peel, or to follow the resolution of the OPSBA.

He also stated, like Dr. Spellman, that violence was a general term that encompassed more than physical acts, and that all violence, however perpetrated, was his concern. (Ev. IV 184)

Mr. Prentice, the Commission's final witness, is Associate Director with the Board of Education of Etobicoke, Ontario. In his Board, too, there is no general policy with regard to kirpans; however, as in North York, an administrative procedure is in place. The relevant subject is contained in minutes of an executive meeting held on August 31, 1987.

> Our position with respect to the wearing of kirpans by Sikhs in the schools is as follows. We will allow a student to wear a small 6-inch symbolic kirpan if it's properly secured and secured beneath the student's clothing. The student, for his own safety, should not be allowed to wear the symbolic kirpan while attending physical education classes. If such classes are compulsory, then the parents might wish to formally request an exemption on religious grounds. This matter was approved by the Executive Committee. (Exhibit 22)

The procedure was instituted after discussions with representatives of the Sikh community. The witness opined that the Board's flexible attitude was working well to date and, since the procedure did not require any notification or permission, he did not know the exact number of kirpan wearing students in Etobicoke. He thought that the number would be relatively small. (Ev. IV 203-205)

The witness also stated that the complainant, Mr. Pandori, was presently teaching in the system, and that a Mr. Hundal who had been a student at Central

Peel Secondary School was attending a secondary school of the Etobicoke Board. (It was likely Sukhdev Hundal referred to in earlier testimony by Mr. Weldon.)

When asked to comment on the use of the term "symbolic" in the above-noted Procedure, Mr. Prentice said there was no attempt to create precise religious terminology. (Ev. IV 215)

It appears, then, that the Etobicoke Board is more restrictive than the North York Board in three respects: that it states the maximum length of the permissible kirpan, that it notes the need for securing the kirpan, and that it excludes students wearing kirpans from physical education.

It is less restrictive, however, in that the student does not require a principal's permission to wear the kirpan nor does his/her baptism have to be verified.

Finally, a number of letters from various Metro Toronto school constituencies were filed and entered as Exhibit 23. They included the University of Toronto, York University, George Brown and Humber Colleges, and Scarborough Board of Education, all of which wrote that they did not have a kirpan policy, the matter not having arisen. The Toronto Board of Education seemed to be somewhat receptive to the idea of expoanding its weapons policy to include such a feature.

At present, then, none of the schools canvassed in the area of Metro Toronto has a kirpan policy. Peel is adjacent to but not part of this area.

4. Ms. Carolyn Parrish, witness for the Peel Board.

Ms Parrish has a background as teacher and writer, has been a trustee of the Peel Board since 1985, and its chair since November 1988. The trustees' meeting of December 13, 1988, at which the "kirpan amendments" to Policy # 48 were adopted, was the first full meeting she chaired after having been elected.

As a trustee she had been present at the May 10, 1988 meeting at which the suspension of Sukhdev Hundal was discussed. (Minutes of that meeting are contained in Exhibit 45.) Those in attendance were shown various kirpans. In recalling her own feelings at that meeting Ms Parrish said:

> I would have presumed [the kirpan] was a potential weapon, and that when I saw...the kirpans that evening, that the weight of them, even the weight of the scabbards, was very overpowering. It was obviously a weapon. (Ev. VII 8)

When asked whether, in her view, the respect for other cultures and religions required by the Board's policy on multiculturalism conflicted with its policy on kirpans, the witness answered in the negative.

She also indicated that she would personally be satisfied that a kirpan could be permitted if it was worn under the person's clothing and was properly secured (assuming that this was religiously acceptable to the wearer).

Ms. Parrish testified that the staff had suggested to the trustees that the kirpan be treated as a weapon. But the trustees delayed their decision until further background was available, recognizing that they had insufficient information before them -- only the staff document to which letters from the International Sikh Youth Federation were appended. The final decision of the Board was not taken until December 13.

At the December 13 meeting, further delegations of Sikhs made submissions to the trustees, who were told that there were possibilities of securing the kirpan and that it could be worn under one's clothing. There was also a letter from the Minister of Citizenship who requested the opportunity to discuss the issue with representatives from the Board and the administration before a final decision was made. (Minutes of the meeting, Exhibit 36)

But the Board voted to proceed forthwith, and it amended the Discipline Policy (#48) in the manner already explained: a kirpan was to be considered a potential weapon and therefore could not be worn in Peel schools. It is not my task to speculate why the trustees did not wish to meet with the Minister and instead decided to proceed with their decision. My task is to decide whether the decision they reached was compatible with the provisions of the *Code*.

5. Ms. Lynda Palazzi, and Messrs. Tony Pontes, William Malcolm (Mac) Campbell, and Norman D. Gollert, witnesses for the Peel Board.

I have grouped these witnesses together because they were directly involved with the two Khalsa students, Sukhdev Hundal and Paramvir Singh, who were affected by the new Policy # 48.

Ms. Palazzi was, in August 1987, Superintendent of Schools in Meadowvale (a family of schools in Peel, and a year later became Superintendent of Programs for the Peel Board. In her former capacity she became involved with problems surrounding the kirpan and was soon convinced that she was dealing with a potential weapon. She traced her participation in the controversy (Ev. VIII 10 et seq.) and never wavered in her view that a kirpan was, in the perception of non-Sikhs, a weapon and that in any case its potential as such was clear.

This insistence stood in contrast to the attempt by the Commission, made at various times during the hearings, to define what was a "weapon." In its view, while many objects can be used as weapons (e.g., screwdrivers) they are not so designed. Thus, kirpans – which appear as weapons -- are designed as religious objects. Therefore, the inclusion of a the kirpan in Policy #48, where it appears under the weapons provisions, represents a flawed understanding of what kirpans really are.

In my opinion, this line of argumentation, while intellectually intriguing, has its limitations. It introduces a philosophical question as to whether the nature of an object is independent of its beholder. Without entering this discussion, it was clear from Ms. Palazzi's testimony that she viewed the kirpan from one perspective while Sikhs viewed it from another. That difference ran like a thread throughout the hearings.

Mr. Pontes, Vice-Principal of Central Peel Secondary School, chanced upon Sukhdev Hundal in the hallway, while the student was talking to other students outside the cafeteria, comporting himself so as inadvertently to expose his kirpan. (Ev. IX 79) At the direction of his principal, Mr. Rose, the witness learned from Sukhdev that the item he was wearing was a religious object and that

> he was the only Sikh wearing a kirpan at Central Peel Secondary School, and that he had been wearing it for approximately one month....He further stated that the wearing of the kirpan was permitted by

'the police force and the Workmen's Compensation hospital', and therefore should be permitted in school. (Ev. IX 82)

At this time Mr. Pontes was quite ignorant of the Sikh faith and its requirements and received some help from Dr. Banwatt, a member of the Canadian Sikh Society. Certain compromise suggestions were explored, but they came to nothing. Dr. Banwatt also suggested that the Sikh student might perhaps be able to obtain an exemption from his religious advisors, the kind one might obtain for medical reasons, but this did not seem feasible. (Ev. IX 86) The student was permitted to remain in class until a reasoned decision could be reached.

Mr. Pontes contacted Sukhdev's parents and invited them to a meeting on April 28. While they could not attend, their son Sukhdev did, as did Dr. Banwatt and Mr. Suneet Singh of the International Sikh Youth Federation. However, the discussion produced no resolution of the issue and it concluded with Mr. Pontes, who had been in touch with his superiors, informing Sukhdev that, although the Board did not want to deprive him of his education, he could not be allowed to continue wearing his kirpan in class and would instead be provided with alternate forms of instruction.

A further meeting was now arranged, at which Sukhdev's parents and Ms. Palazzi, then Mr. Pontes' superintendent of schools, would be present. Meanwhile, Sukhdev, when he continued to appear at school with his kirpan, was not permitted to join his class but was given space adjacent to the principal, where he received work from the teachers and was at times given individual instruction.

On the morning of May 2nd (the day for which a meeting was planned with Sukhdev's parents and others)

> Sukhdev politely indicated that he was frustrated, that he could no longer remain in the office, that he felt he could not learn as well by himself as he could in class with the teacher and with his classmates. (Ev. IX 100)

At this point, Mr. Pontes notified Ms. Palazzi. The Principal, Mr. Rose, also tried to convince Sukhdev to remain in the office. When he refused he was suspended for the remainder of that day as well as the next day for "persistent

opposition to authority." (Memo to the Peel Trustees, signed by Ms. Palazzi and Messrs. Rose and Pontes, dated May 9, Exhibit 46)

Later that day a meeting was held in the Meadowvale Field Office which, among others, was attended by Sukhdev, his father, Mr. Suneet Singh, Ms. Palazzi, Mr. Rose and Mr. Pontes. (Exhibit 53) They discussed the matter of suspension, were informed of the permissive way the issue was handled in Alberta, and Mr. Singh insisted that the issue was not "opposition to authority" but rather the right to practice one's religion. The meeting was an exchange of opinions; subsequent to it the above-mentioned memo was drawn up and the entire issue debated by the Peel trustees at their next meeting,

Mr. Pontes' testimony, while it did not add any new facts, does put the process clearly in view: He was the one to discover that a student was wearing a kirpan; he started with little knowledge of the Sikh faith; he informed his principal about what he had seen and what the student had claimed; and the principal in turn asked for guidance from his superiors. Everyone began to learn about Sikhism; Sukhdev's family were contacted; and two meetings were arranged to see how the matter could be resolved. In the end, the previously noted clash of opinions occurred: the Sikhs saw the kirpan as an exclusively religious object; the administration, while acknowledging the kirpan's religious connotation, saw it primarily as a weapon and felt that it had to be prohibited under the existing weapons policy.

Mr. Gollert, M.A., has wide teaching and administrative experience and was the Operations Officer for the Peel Board with whom Mr. Pontes was in touch. The case of Suneet Singh Tuli in Alberta had made him sensitive to the needs of Sikh students (Ev. VIII 61), and he had advised Mr. Pontes to treat the Hundal case with respect for religious sensitivities.

His testimony supported that given by Mr. Pontes and in addition touched on some broader issues. Thus, the witness had prepared a survey of violent incidents involving knives (Exhibit 40) and in June 1988 wrote to his superior, Mr. Fraser:

> I continue to be concerned regarding the growing incidence of weapons (knives) in three different schools. (Exhibit 58)

He made contacts with other school boards to ascertain their weapons and kirpan policy. This survey included the school boards of Hamilton, London, Etobicoke, North York, Toronto, Halton, Durham, Ottawa, York, and Scarborough, all in Ontario. Most had no weapons policy as such, and none had a specific kirpan policy. (Exhibit 59)

Mr. Gollert also inquired about the kirpan policy of the Peel regional police force, but the information on which he reported (Ev.VIII 85) has since been updated. On May 9, 1990 By-Law Number 142 was amended in Schedule "A" Section 5.16 (ii) to read:

> ...such members who have applied for and received permission to deviate from the prescribed standard of appearance as noted in Paragraph 5.16 (i) may wear:
>
> (a) a Kirpan under the police uniform...

However, since a police officer is already armed it appears to me that this policy does not impact on the instant case in one way or another.

Mr. Gollert further related that he had met with Sikh community members and had explored avenues of compromise, but found that no group could lay down a universally accepted rule and that it was in the end up to individuals to determine the strictness of their observance.

In the end he concluded that kirpans constituted an added danger in a volatile environment, and it was he who contributed to the proposal for the modification of Policy # 48, which went over the signature of Mr. Weldon (Exhibit. 35). He thought it to be "inconsistent to allow a selected student, or a number of students, to carry kirpans." (Ev. VIII 64)

He also testified about a certain Khalsa student whose religious habits were said to have differed from those of others. But while I admitted Mr. Gollert's testimony over Commission Counsel's objection, I have come to the conclusion that this testimony has no weight beyond suggesting what was already part of the record: that there are different levels of strictness in the Sikh religion as there are

in any other. Even Khalsa Sikhs do not interpret their obligations in exactly the same manner.

In sum, Mr. Gollert's testimony emphasized the growth of knife-related violence. It also showed that the kirpan policy of the Peel Board was not based on models of other boards, but grew out of opinions and considerations developed primarily in Peel.

Mr. Campbell, M.A., M.Ed., was a teacher for seven years and has been an administrator for twenty-one. In 1987/88 he was the principal of Ridgewood Public School, where Paramvir Singh attended as a student in fourth grade. The school population was ethnoculturally quite diverse.

Paramvir was a capable student; and he attended ESL classes.[16] (Ev. X 43-44) He had enrolled in the fall of 1987, but it was not until November that the principal learned that ten year old Paramvir was wearing a kirpan because he was Khalsa. His parents admitted that this was a rather young age.

Mr. Campbell, in a conference with the parents, indicated that he would allow the boy to wear his kirpan, as long as he would wear it hidden under his clothes, and that he would not use it improperly. He also suggested that Paramvir not talk about it, apparently fearing that other boys might become unduly interested in the strange item.

The witness had also learned of a neighbouring school where a girl student was allowed to wear her kirpan, and he had become aware of the Tuli case in Alberta, in which a Khalsa student, who had been denied the right to wear his kirpan had invoked the *Individual's Rights Protection Act* (the case will be discussed in Section III, *infra.*). In consequence of this, he permitted Paramvir to keep on wearing his kirpan, as long as he observed the above-noted conditions. This was at the beginning of November 1987.

It was not until the end of May 1988 that Mr. Campbell was contacted by his superiors with regard to young Singh. (Ev. X 14) He was advised of the existing policy of the Peel Board, which he understood to mean that a 3.5 inch kirpan

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16 "English as a second language" – a specialized program of English instruction aimed at helping students to join the regular educational stream.

would be permissible, while a kirpan of greater length would not. (Ev. X 77) Thereupon, together with his superintendent, he again met with the family. They were advised by letter that the required maximum length 3.5 inch kirpan was available in the Toronto area (Ev. X 25; Exhibit 69)

Paramvir then came to school with a much larger kirpan, which he wore on the outside of his clothing. On request by the principal he hid it underneath, but at this point he did his work in an area supervised by the principal. The latter took a great interest in the boy, helped him personally and had him return to class occasionally and allowed him to attend an awards assembly, while supervised by an adult. Mr. Campbell's supervisor, Mr. Norm Gollert, approved of his handling the matter.

On June 17 an incident occurred which in the view of Respondent Counsel was of great significance. Paramvir was walking home with a friend when he was verbally assaulted by two older boys. It appears that the word "punch" (a word not known to Paramvir) played some role, and in order to demonstrate what it meant the older boy punched Paramvir on the shoulder.

> Paramvir then...clasped his hand to the handle of his kirpan and said, "This is the way we punch in India....The boys then stepped back and were, to a degree, alarmed by the incident. (Ev. X 47; Mr. Campbell's full memo about the incident was submitted as Exhibit 72)

All agreed that Paramvir had not extracted the blade from the sheath and that after his implied threat he had run away. Though all of this happened outside the school, one of the boys reported the incident to Mr. Campbell who called all participants into his office and explained the gravity of the matter. All of them regretted the incident and apologized. (Ev. X 71)

Mr. Campbell stated that he had not undertaken any program to acquaint the student body with the meaning of the kirpan as a religious symbol (Ev. X 68-69). Quite clearly, he hoped that the less one said about it the better; once the students' attention was drawn to the presence of kirpans another possibility for violence was created.

The present policy of the Peel Board makes this type of discretion of course impossible. But viewing it all in all he now supports the new, restrictive policy.

> When [students] want to be...overly assertive [they] may use what they have at their access. That is often the sharp tongue, the negative communication. It could be the hands, it could be the feet. It could be the spittle. It could also be...the kirpan. (Ev. X 60-61)

A number of facts emerged from Mr. Campbell's testimony.

The witness himself acted in a highly responsible manner, with obvious concern for the religious sensibility of the Singh family. Even in view of a directive from the Peel trustees he took it upon himself to make certain exceptions for Paramvir and, under proper supervision, had him mix with other students on certain occasions.

The family offered to make the kirpan inoperable as a potential weapon by stitching it securely, but the offer was not taken up. (Ev. X 39-40)

The incident in which Paramvir threatened his hasslers showed that, in his case anyway, the potential of a kirpan as a weapon was present in the boy's mind – even though his action did not go beyond laying his hand on the kirpan. It needs to be recalled that the boy was ten years old.

Mr. Campbell astutely interpreted the meaning of aggression: it was not merely physical, it was often verbal. Violence has many faces.

6. Ms. Zubeda Vahed and Dr. Edward Blackstock,

witnesses for the respondent

Zubeda Vahed is the only multiculturalism and race relations officer for the Peel Board. A number of exhibits were introduced to show in what way her department impacts on the school system, one being a small four-page pamphlet entitled *Racial/Ethnocultural Harassment*, which is published by the Peel Board and explains how complaint procedures are initiated and handled.. Its preamble reads:

> The Peel Board of Education is committed to a philosophy of respect for the racial, ethnic and cultural plurality of our society. It is the policy of the Board that all staff and students will be encouraged to develop a sense of self-worth and that incidents of discrimination will not be tolerated in our school system. All staff and students have a right to function in an environment free of any racial/ethnocultural harassment. (Exhibit 63)

The task of the witness is centred around developing policy, but she is occasionally called upon to function in specific situations.

Asked whether there were various levels of religious commitment within the Sikh community, Ms. Vahed (who is not a Sikh) said:

> That is true of many faith communities...different levels of commitment, understanding, orthodoxy, interpretation, life experience, education. (Ev. IX 49)

Ms. Vahed was called by Mr. Pontes when he encountered Sukhdev Hundal wearing a kirpan (*supra,* s. 5). It was her impression that Mr. Pontes wanted to accommodate Sukhdev if at all possible. She replied that she was not in a position to make a judgment in the matter, and therefore referred him to Dr. Banwatt, a member of the Sikh community. (Ev. IX 28) But she had no further involvement in the matter and had no share in formulating the amendments to Policy # 48. (Ev. IX 53)

Commission Counsel then asked the witness to comment on two documents. One was *Changing Perspectives,* which is a resource guide for race and ethnocultural equity, created by the Ontario Ministry of Education. (Exhibit 64)[17] It was published in 1989, after the Peel policy was adopted. On p. 4 it speaks of its objective to promote

> education that will enable all students to feel that their culture and identity are validated by the educational system, develop a positive self-image that includes pride in their racial, ethno-cultural identity and

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[17] Only the so-called "Validation Draft" and not the final copy was introduced.

> heritage, accept and appreciate diversity and reject prejudicial and discriminatory attitudes and behaviour.

Ms. Vahed was asked to compare this desired goal with the text of the Peel board's amended Policy # 48 which is reflected in its *Information Handbook* for students, introduced earlier (*sub* II 2) as Exhibit 30. There, on p. 24, # 14 it says:

> Students will not be allowed to possess weapons of any nature, including kirpans, on school property. Baptized Sikh students will be subject to the following regulations....

She stated that this language, when read by a Sikh student entering the school system, would not make him feel that his culture and identity were "validated by the educational system," as the Ministry's guidelines had requested. Furthermore, being led to believe that Sikh students were permitted to carry weapons, would likely create fear and distrust among the general school population, instead of fostering "acceptance and appreciation of diversity." (Ev. IX 60-63)

Even though the witness had appeared for and was employed by the Peel Board, this exchange made it clear that the phrasing of the Policy and the *Handbook* was not compatible with the basic objectives of the Peel Board's own department on race relations.

Edward Blackstock, Ph.D., is a specialist in developmental psychology and chief psychologist for the Peel Board of Education. There are altogether some 46 psychologists employed by the Board, a number which the witness described as inadequate to provide proper counselling and assessment. (Ev. VII 130) The testimony can be summarized as follows:

There are no available data which allow authorities to predict which students will be violent. The witness could not think of a single violent incident that the school could have prevented on the basis of the knowledge it had at hand. (Ev. VII 140)

Teenagers are fascinated by weapons, especially knives. Most of them would see kirpans as weapons. The kirpan, especially if the sheath is decorated,

might be perceived as a weapon, be of high interest, even "awesome". (Ev. VII 141, 143-144)

It is well to remember that children and teenagers think differently from the way adults do. (Ev. VII 142)

Dr. Blackstock related the way the Peel system treats students who have a record of violence. If at all possible they are returned to school, and some hundred behavioural assistant teachers are assigned to watch and counsel them. In two cases difficult-to-control offenders are watched by two full-time assistant teachers. (Ev. VII 146-147)

Although there have been cases in his experience when he advised the authorities not to return a child to the system because of potential violence, the child was returned and subsequently did some harm. But school administrators feel that

> you cannot exclude people from education on the suspicion that they might engage in violent or dangerous behaviour.... (Ev. VII 151)

He told the story of one student who was diagnosed by a psychiatrist:

> Yes, this child is a psychotic, he is dangerous. However, it is more dangerous for him to remain at home alone than to come to school, so he may return to school. (Ev. VII 152-156)

Because violence is rare in our system we cannot rely on statistical data (there being too few of them). Thus, while kirpans have not figured in violent incidents, their presence is so small that it is hard to predict whether there is a likelihood that they might be so used.

While all prediction is difficult, the more information is available the better. Thus, if one knows the presence of alcohol or drugs in a student's life the risk of violence is greater than if there were no substance abuse. Similarly, the risk is lessened when there is a strong family structure to support a student. Consequently he would agree that Sikh students on the whole present a lower risk factor. (Ev. VII 168-69)

The witness opined that we all suffer from the fear of the unknown and often make assumptions about those we do not know. He seemed to feel that Sikhs belonged to this latter category and that added knowledge and acquaintance would be helpful. (Ev. VII 183)

I found the testimony of Dr. Blackstock particularly noteworthy in that he related how violent offenders and psychotics were treated in the Peel system. Additional staff was hired to make sure that such students could continue school, and that included students who had proven themselves to be dangerous. I shall have occasion to return to these observations in Section IV, *infra*.

III LEGAL ANALYSIS.

The complaints by the Commission and Mr. Pandori were based on. ss. 1, 4, 8 and 10 of the *Code*. The relevant sections read as follows:

> 1. Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or handicap.
>
> 4(1). Every person has a right to equal treatment with respect to employment without discrimination because of ...creed...
>
> 8. No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part [i.e., Part I, entitled Freedom from Discrimination].
>
> 10(1). A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,
>
> (a) the requirement, qualification or factor is reasonable and *bona fide* in the circumstances [...]
>
> (2) The Commission, a Board of inquiry or a court shall not find that a requirement, qualification or factor is reasonable and *bona fide* in the circumstances unless it is satisfied that the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

As noted, Respondent had originally argued that the Commission's complaint was without foundation because education was not one of the "services" referred to in s. 1. That argument was disallowed by the Divisional

Court and the matter therefore proceeded before this Board of Inquiry. (*supra*, I 1)

1. Direct and Indirect Discrimination.

The Commission argued the case along two different lines simultaneously. It argued that s. 1 was infringed in that there had been direct discrimination; but that, should the appeal to s. 1 fail, then s. 10 would become the basis for the complaint in that indirect discrimination[18] had undoubtedly occurred. I will therefore initially discuss direct discrimination and its applicability to this case.

The Supreme Court, in *O'Malley v. Simpson-Sears Ltd.*, 7 C.H.R.R. (1986), defined direct discrimination as a practice

> which on its face discriminates on a prohibited ground, for example, No Catholics, or no women, or no blacks employed here. (D/3106, ¶ 24772)

Commission held that section 14 of the discipline policy of the Peel Board (reprinted in the *Information Handbook*) had such an impact, in that it directly excluded Khalsa Sikhs from the schools when it said:

> Students will not be allowed to possess weapons of any nature, including kirpans, on school property. Baptized Sikh students who wear kirpans will be subject to the following regulations:
>
> If the kirpan is left at home students are welcomed and encouraged to participate in all school.activities.
>
> A Sikh student may attend school wearing a symbolic representation of the kirpan, provided that symbolic representation does not involve a metal blade that could be used as a weapon.
>
> It is a requirement of the Peel Board of Education that these regulations be communicated annually to all students and to new students upon registration.

[18] Also referred to as constructive or adverse effect discrimination.

The Commission called this a case of direct discrimination in that Khalsa Sikhs, who according to their religion must wear a kirpan with a metal blade, are singled out and excluded from school. Commission claims the regulation fits the example quoted by the Supreme Court ("No Catholics, no women no blacks") and says, in effect, "Khalsa Sikhs who wish to live in accordance with their obligations are not admitted to our schools."

Further, the Commission argued that the laudable intention of the Peel Board to protect its students and staff is irrelevant when discrimination takes place. In support of this, Counsel referred to the case of non-Canadian doctors in British Columbia where the judgment stated:

> We have no doubt that the principal motivation of the College, in adopting the policy under review, was a wholly laudable one. [...] To acknowledge, as we do, that the College has acted with a high public purpose, does not, however, affect the fact that the result of the policy is to discriminate against non-Canadian doctors on grounds quite unrelated to their qualifications for the practice of medicine. (Judgment dated 27 May, 1976, Leon Getz, Chairman; cited in Commission's Book of Authorities, vol. I, Tab 7, p.8).

Thus, the issue was not whether the Peel Board had the laudable intention to maximize safety in the schools, but rather whether its weapons policy unequivocally excluded Khalsa Sikhs from its school precincts. This would be direct discrimination within the meaning of s.1 of the *Code* ; and while other infringements of the section provide for a stated defense, religious discrimination does not. Counsel said:

> There is no defense in the *Ontario Human Rights Code* to a prima facie case of direct discrimination on the basis of religion by a public School Board in the provision of goods, services and facilities. (Ev. XI 42)

I find this line of argumentation problematic, because there is some question as to whether the Peel policy, when seen in context, constitutes a case of direct discrimination to be adjudged under s. 1, and therefore whether the case at bar is more fruitfully examined under s. 10.

The primary reason for eschewing s. 1 of the Code as the basis for judgment lies in my doubt concerning its applicability to the contested text of Policy #48 as publicized in the *Information Handbook* of the Peel Board.

To be sure, seen by itself and out of context, Khalsa Sikhs who deem their religion to demand that they wear a kirpan of steel and of sufficient size are expressly excluded. At first blush this appears indeed to constitute a case of direct discrimination as Commission has argued. But when one reads this provision in the context of the discipline policy another interpretation suggests itself. Respondent put it this way:

> The policy does not say, "We will not allow Khalsa Sikhs." The policy is neutral in the sense that it says, "Kirpans will not be allowed in the school, but we will allow a symbolic representation." (Ev. XII 44)

Respondent Counsel stressed that this was a kirpan policy, not a Sikh policy, for none of the other 4 K's was excluded and that, in the light of the evidence discussed earlier, there could be no doubt that the Peel Board tried to include Sikh students rather than to exclude them. Numerous discussions with families and group representatives had been held, all with the purpose of finding an accommodation for Sikhs in the school system. That these discussions were not fruitful is not decisive at this point .

I am persuaded that Policy #48 might be read in the light of these discussions and that it attempts simply to argue that weapons are prohibited, which injunction includes kirpans; that though they are Sikh religious accoutrements they will be considered weapons by many if not most non-Sikhs and must therefore be banned; that this is not meant as a purposeful exclusion of Sikh students and that, on the contrary, awareness of their religious obligations is acknowledged. The Board feels that it is telling them that they are welcome in its schools like everyone else. There is a weapons policy and they like other srtudents must comply with it. Therefore, should they wear their kirpans in school they must observe certain safety provisions.

The Policy is a document which tries to achieve certain ends and which must be read for its purpose as much as for its language. The Peel Policy tries to eliminate all weapons, even though in doing so it clouds its objective to some

degree by its wording. By making this observation I am not reverting to the Policy's "laudable intent"; rather, I am considering the meaning of the Policy.

At the same time I deem it to be poorly phrased, so poorly in fact that witness Zubeda Vahet, appearing for the Respondent, admitted that its impact was detrimental to the self-respect of Sikhs, whether they were observant or not.

Commission Counsel further argued that, even if one were to consider the Policy as neutral it would still be a case of direct discrimination because it was not applied consistently.[19] For a "weapons" policy must deal with weapons in order to be consistent, and kirpans cannot be so classified.

I did not find that argument persuasive either. As has already been stated, and as witnesses have emphasized, while the kirpan is not considered a weapon by Sikhs it is so considered by many (perhaps even most) non-Sikhs. It has the shape of a dagger and creates the impression that it is precisely that – however much that impression is based on a lack of knowledge of Sikh religious symbolism. In such circumstances the impression alone can justify the definition of "weapon" even if it not so considered by the wearer. To take a parallel case, a toy gun which the user knows to be a toy may be seen as a real gun by someone who feels threatened by it. Prohibiting toy guns under the weapons policy would not in itself invite the judgment of inconsistency.

And further, as has already been shown and will be discussed further later on, even Khalsa Sikhs are not unaware that despite its spiritual function a kirpan has a potential for being used as a weapon, and that therefore the Commission's argument of inconsistency cannot be sustained.

I therefore conclude that the appropriate course is to examine the Policy not under s. 1 but under s. 10, which is designed as an extended interpretation of what may constitute discrimination, thus allowing for an assessment of the kirpan policy of the Peel Board in the light of the defenses there provided. In other words, can Peel's Policy # 48 as amended be defended as "reasonable" and "*bona*

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[19] In support, Commission cited the two hearings before Board of Inquiry Chairman M.A. Hickling, in *Buphinder Singh Dhaliwal v. B.C. Timber Ltd.* (1983), 4 C.H.R.R. D/1520-1555; (1984), 6 D/2532-2538. The issue was an alleged language deficiency of the complainant which was said to constitute a danger in his particular employment situation. But the safety issue was not consistently interpreted by the company, and no one had demonstrated that language deficiency had caused an accident (see the first decision, D/1536 at ¶ 13263).

fide " under ss. 10(1) and (2), and have the "undue hardship" and "safety" provisions been satisfied? This approach is supported inferentially by the Commission's phrasing of its claim in the alternative.

Mr. Pandori's ability to teach in the Peel system is similarly dependent on how s. 10 is adjudged. For though the Board's amended Policy # 48 was directed primarily at students, once it was passed it was applied to Sikh teachers as well and Mr. Pandori was informed that he could no longer teach in the school system.

This means that, if Policy #48 as amended is allowed to stand, both the Commission's and Mr. Pandori's complaint will fall; if it is struck down, both will succeed.

2. The Application of S. 10 to the Case.

a. *Onus*. The contested Policy # 48 identifies kirpans of the ordinary size and kind baptised Sikhs are obliged to have on their persons and prohibits their being worn at school. The prohibition creates adverse effect discrimination for such Sikhs and constitutes a prima facie infringement of the *Code*. The onus then falls on the Respondent to prove that s. 10 provides an adequate defense (see *O'Malley, supra*, D/3108 at ¶ 24782).

The proof which the respondent brings forth

> must be made according to the ordinary civil standard of proof, that is upon a balance of probabilities. (Supreme Court of Canada in *Ontario Human Rights Commission and Bruce Dunlop et al. v. The Borough of Etobicoke*, 3 C.H.R.R. (1983), D/783, at ¶ 6892).

To begin with, Respondent must show that the prohibition of kirpans was reasonable and *bona fide* according to s. 10 (1)(a), and this Board of Inquiry must be satisfied that respondent would otherwise incur undue hardship, as stipulated by s. 10 (2). This means that in the case at bar reasonableness and *bona fides* on the part of the respondent are not enough but are conditioned by the provisions of s. 10 (2).

b. *Definitions*. Commission Counsel cited various sources for definitions of "undue hardship," which went uncontradicted: *The Concise Oxford Dictionary*

(7th ed.); *Webster's Ninth New Collegiate Dictionary*; *Black's Law Dictionary* (5th ed.); *Stroud's Judicial Dictionary* (5th ed.); and *Words and Phrases Legally Defined* (ed. John B. Saunders, 2nd ed.).

> Hardship: The word must be construed by the courts in a common sense way...such as would meet with the approval of ordinary sensible people. (*Words and Phrases*, quoting *Rukat v. Rukat*, [1975] 1 All ER 343 at 351, CA)
>
> Undue: Defined by *Oxford* as "disproportionate," and by *Black's* as "more than necessary".
>
> Undue Hardship: For a hardship to be 'undue' it must be shown...that the particular burden to the applicant to have to observe or perform the requirement is out of proportion to the nature of the requirement itself. (*Stroud's*, quoting *Re Walsh*, [1944] V.L.R. 147, 153).

Commission Counsel also called to my attention the French version of s. 10 which phrases "undue hardship" as *préjudice injustifié*, which, together with the cited definitions, makes it clear that the respondent may not claim the exemption of 10 (1)(a) merely because of some casual, negligible or passing problem, but that it must be a condition which would expose respondent to weighty consequences.

Respondent Counsel held that, indeed, such weighty consequences would ensue if its Policy were vitiated, for the safety of students and personnel could no longer be properly maintained since the presence of kirpans added an unconscionable risk. If the safety of Peel schools was impaired, "undue hardship" would ensue and the Board of Trustees could no longer fulfill the obligation of running a school system as the *Education Act* would have it do. Thus, it comes down to the question whether the Board's concern for safety was reasonable in light of all the circumstances, and whether the risk to safety was such that it could override the religious freedom of students and teachers who professed the Sikh religion and attempted to practice it daily.

c. *Safety*. To begin, it is appropriate to cite the principles enunciated by the Supreme Court in *R. c. Big M Drug Mart Ltd.*, [1985] 1 R.C.S. 295. At issue was the validity of the *Lord's Day Act* and the power to compel, on religious

grounds, the universal observance of the day of rest preferred by one religion. The Court found the *Act* to be inconsistent with the preservation and enhancement of the multicultural heritage of Canadians recognized in s. 27 of the *Charter*.

The Court took pains to comment on the nature of religious freedom in the presence of other factors that would curtail it. Chief Justice Dickson stated:

> A truly free society is one which can accommodate a wide variety of beliefs...The essence of the concept of freedom of religion is to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination. But the concept means more than that.
>
> Freedom can primarily be characterized by the absence of coercion and restraint...Coercion includes indirect forms of control ...Freedom means that, subject to such limitations as are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience. (p. 336/337)

This overarching rule lists, among the limitations of religious freedom, the necessity to protect public safety. Surely, the schools are part of the public domain, and thus it comes down to a question as to how broadly or narrowly the discipline policy of the Peel Board should interpret this necessity.

The Supreme Court, in *O'Malley* (cited *supra*), left no doubt that in such instances the *Code* must be constructed liberally and not narrowly. Said Mr. Justice McIntyre, speaking for the Court:

> It is not, in my view, a sound approach to say that according to established rules of construction no broader meaning can be given to the Code than the narrowest interpretation of the words employed. [...] The Code aims at the removal of discrimination. This is to state the obvious. Its main approach is, however, not to punish the discriminator, but rather to provide relief for the victims of discrimination. (D/3105, at ¶ 24766)

In *Canadian National Railway Co. v. Canadian Human Rights Commission et al.* (commonly referred to as *Action Travail des Femmes*), [1987] 87 C.L.L.R. ¶17,022, the Court had recognized that

> the unequivocal adoption of the idea of "adverse effect discrimination" by the courts is the result of a commitment to the purposive interpretation of human rights legislation. (P. 16,264)

The Court quoted with approval the judgment of the Court of Appeal of Saskatchewan (in *Canadian Odeon Theatres Ltd. v. Saskatchewan Human Rights Commission*, [1985] 3 W.W.R. 717, at p. 735):

> Generally human rights legislation has been given a broad interpretation to ensure that the stated objects and purposes are fulfilled. A narrow restrictive interpretation which would defeat the purpose of the legislation, that is, the elimination of dicrimination, should be avoided. (*ibid.*)

In a recent decision of an Ontario Board of Inquiry, Chairperson . Pentney summarized these and other precedents in the following way:

> The cases...emphasize that the purposive approach entails two corollary principles: first, the principle that the substantive prohibitions of discrimination in these laws must receive a broad and generous interpretation, and second, the principle that exceptions or defenses in these laws must be narrowly construed, so as not to defeat the purpose of the statutes. (*Gohm v. Domtar*; decision rendered May 18, 1990, unreported)

It is therefore not sufficient for Peel trustees to claim that they had safety in mind when they prohibited the kirpan, they must also show that this was a necessary action, its necessity being compelling enough to override the prior right of religious freedom.

During the time that Mr. Pandori or student Sukhdev Hundal wore their kirpans undetected (before the matter became an issue) nothing untoward

happened. Respondent did not contest this but held that it meant little since the Board's Policy was pro-active rather than reactive.

Instead, Respondent called attention to the matter of Paramvir Singh, the ten-year old student who, while on his way home from school was harassed by older students and, in defense, pointed to his kirpan as a means of potential retaliation. Having done so he proceeded to run away (*supra* II 5).

Commission in turn pointed to the fact that Paramvir did not unsheathe his kirpan but, having his harassers back off for a moment, sought his refuge not in using the kirpan but in running away.

I would hesitate to impose a general prohibition of the kirpan on so flimsy an incident. We deal with a ten-year old boy who feels himself cornered and, after being punched, says: "This is how we punch in India" -- pointing to his kirpan. The most that can be said for the Respondent's argument is that the boy was aware of the weapon-like quality of his kirpan, but on the other hand did not translate this awareness into any action.

Respondent has underscored that a kirpan could have the function of a weapon, but did not establish that a student had in fact so used it. In fact, there is not a single incident to which Respondent could point when the kirpan was used on school property or its environs – either in Peel or anywhere in Ontario or even all of Canada. Since Sikhs, and Khalsa among them, have been in this country for nearly a hundred years, this a record worth considering.

As indicated, Respondent underlined its policy of pro-action and said that the absence of a kirpan contributed to safety more than the presence of a kirpan. But this applies also to other items on school campuses: eating forks and knives in the cafeteria, cutting instruments in the craft shop, or baseball bats. All of these are designed for purposes other than inter-personal violence, yet some of them have been so misused. But the kirpan, which long ago lost its martial function, has never seen improper usage in a school setting.

True, it <u>could</u> be misused as it has been on occasion in other settings. We must therefore ask, who <u>would</u> so misuse it?

Khalsa teachers? Hardly, and that claim was not even made.

Khalsa students? Even though Respondent pointed to the single incident of Paramvir Singh, it cannot be considered a suitable foundation for a general policy; for it suggests that Khalsa Sikhs are prone to violence, and that giving them access to kirpans during school hours increases this potential. Since there have been no reported incidents of Khalsa students having misused their kirpans anywhere in Canada, this argument too cannot be sustained on a balance of probabilities.

In fact, Respondent largely abandoned this line of argument and concentrated instead on claiming that the presence of a kirpan was an invitation to violence by others. Prohibiting the kirpan was therefore a cautionary, pro-active measure designed to increase the level of safety.

One must then ask what kind of contribution was thereby being made to the level of safety in Peel schools?

The Supreme Court in the "fire fighter's case" (*Dunlop v. Borough of Etobicoke*; *supra*) stressed that objective and not vague and impressionistic evidence was required. (D/783 at ¶ 6894; D/784 at ¶ 6898). It is up to the Respondent, upon whom the onus devolves, to show that doing otherwise "would have caused undue hardship...and thus have been unreasonable." (*O'Malley, supra,* D/3109 at ¶ 24783)

Respondent relied heavily on the statistics involving knives in violent incidents. The list was prepared by Mr. Gollert which stated:

> I continue to be concerned regarding the growing incidence of weapons in our schools. (June 8, 1988; Exhibit 58)

He noted that five days before, three separate incidents with knives were reported to him, and he submitted four statistical tables showing such use (Exhibits 40-43). Thus, Exhibit 42 shows that there were thirty-five cases of possession, of which twenty resulted in displays or threats, and four inflicted damages. Of these, two resulted in personal injury. (Exhibit 40)

The Commission did not dispute Respondent's factual evidence that knives were a prime instrument in school violence, nor did it dispute Dr. Blackstock's opinion that the kirpan would likely be a most attractive and even "awesome"

item that would attract the wanted and unwanted attention of fellow students. The argument proffered by the Commission came down to the matter of risk, and indeed, I consider this to be the heart of the issue.

Clearly, the Peel trustees, who are supported by the professionals in the system, considered the presence of kirpans an unacceptable risk and therefore forbade it. If this view can be sustained, this Board of Inquiry would be satisfied that the qualification of "undue hardship", stipulated by s. 10(2), has been met.

The Commission, *per contra,* phrased the issue somewhat differently. It insisted that we should not ask, "What will happen <u>if</u> the kirpan is used improperly?" but, "<u>Will</u> it be used improperly?" The proper answer to this question would be, in the view of the Commission, that we have no evidence that kirpans will be so used. Other instruments not designed to inflict harm have been misused (Ev. VIII 174), but kirpans have never been misused in a school setting. Students Sukhdev Hundal and Paramvir Singh did wear their kirpans at school for considerable periods of time (before they were prohibited from doing so) and nothing untoward ever occurred (see Ev. IX 115; X 62-65), and similarly, no misuse was reported with regard to the kirpan of complainant Harbhajan Singh Pandori.

The Commission buttressed this argument by citing the absence of incidents in British Columbia, where many baptised Sikhs go to school (Ev. IV 22, 39); as well as in school regions close to Peel, such as North York (*ibid.*, 73 and Exhibit 14) or Etobicoke (*ibid.*, 204 and Exhibit 22; both Mr. Pandori went there to teach and student Sukhdev Hundal attended school there, after having been prevented from continuing in Peel).

But is recourse to such comparative evidence permissible in law? The matter was dealt with by Professor Zemans in *Pritam Singh v. Workmen's Compensation Board Hospital and Rehabilitation Centre*, 2 C.H.R.R. (1981), D/459. Acting as a Board of Inquiry he held that a Khalsa Sikh should be allowed to wear his kirpan while in the hospital, and that this right was protected by the *Code.*

> I find that it is clearly relevant when deciding whether a specific policy of a public hospital act was "reasonable"[20] to examine the actions and policies of other hospitals in comparable situations. The Respondent's actions cannot be judged in a vacuum. (D/466 at ¶ 4204; quoting precedents).

I accept this line of thought and hold that the Commission had sound reason to call on the negative evidence of other school regions. After all, Peel's policy of prohibiting kirpans appears to be unique in Ontario. For such a policy to be found not to infringe the *Code* it must be shown that it was necessary and that to do what all other school regions are doing is deemed inadvisable for Peel and would impose upon it "undue hardship." This is what the spirit of the *Code* requires, and this is what s. 10(2) specifically requires a Board of Inquiry to observe -- nothing more, but also nothing less.

In contemplating this issue I have looked for guidance to precedent cases where kirpans were at issue.

(i) In *Pritam Singh, supra*, Prof. Zemans ruled on the refusal of an Ontario public hospital to accommodate a kirpan-wearing Sikh and said:

> There was absolutely no evidence that Mr. Singh [the complainant] intended to use his kirpan in an offensive manner. Canadian law holds that the knife is not *prima facie* an offensive weapon. (D/465 at ¶ 4198)
>
> The question remains, however, whether the respondents were *reasonable* in including Mr. Singh's kirpan within *their* definition of an offensive weapon. (¶ 4199)
>
> In my opinion, we cannot infringe upon the religious practices of minorities simply because of unreasonable apprehensions of other members of society. (D/467 at ¶ 4213)

Prof. Zemans cited the words of Mr. Justice Douglas of the United States Supreme Court:

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[20] Prof. Zemans adjudicated the matter on the basis of the old *Code*, but the legal issue which he addressed remains the same.

> Many people hold alien beliefs to the majority of our society -- beliefs which could easily be trod down under the guise of "police" or "health" regulations reflecting the majority's view. (D/462 at ¶ 4171, citing [1963] 374 U.S. 398, at 411)

In his decision the Board of Inquiry decided that the hospital had contravened the *Code*. and sustained the complaint by Mr. Singh.

(ii) *Tuli v. St. Albert Board of Education* (1985), 8 C.H.R.R. D/3736 (Alta. Bd. of Inq.). Suneet Singh Tuli was a student in an Alberta school and advised his principal that he was to be baptised as a Khalsa and asked permission to wear his kirpan to school. The school trustees passed a resolution refusing such permission, whereupon the student obtained a court injunction which prevented the school Board from putting the resolution into effect. Tuli wore his kirpan until he graduated, and no untoward incident occurred. In fact, the Board of Inquiry dismissed Tuli's complaint because no discrimination had actually occurred since Tuli had been able to wear his kirpan after all.

In many regards the case paralleled the case at bar. The resolution of the trustees was preceded by various meetings as well as by private tutoring in the school before. the injunction was obtained. It is noteworthy that the superintendent of schools, called as a witness,

> acknowledged that he had no reason to be concerned that the complainant would use the kirpan intentionally to inflict harm on others or himself. However, he expressed a constantly heightening concern about school safety and related insurance problems and claims. (D/3741 at ¶ 29601)

This was not enough for the Board of Inquiry who required

> cogent proof by a very high preponderance of probability. It is not enough, in my view, in endeavouring to justify a ruling on safety grounds to rely on hypothetical and imagined circumstances. The traits and the personality of the Khalsa Sikh involved must definitely be taken into account. The complainant in this case was universally regarded as a model student. Indeed, he was complimented by the principal...for the manner

> in which he sought permission to wear the kirpan. He could just as easily have worn it under his shirt without telling anyone and the probability is that that no one would have known the difference. (D/3745 at ¶ 29629)

(iii) *New York v. Partap Singh*, 516 N.Y.S. (2d) 412 (New York City Civil Court 1987). Mr. Singh had worn a kirpan in full view while boarding a train, in contravention of law. Judge Milano asked the question which concerns the case at bar: "When does an individual's first amendment right [to religious freedom] yield to the State's duty to protect its citizens?" The Court held that the State's duty here was paramount, in part because the granting of an exemption to a practising Sikh would place an intolerable burden upon law enforcement officials. They would have to ascertain whether in fact the person wearing the kirpan was a Khalsa Sikh (p.415; the Court nonetheless dismissed the case because prosecution and conviction of the defendant Sikh would not serve any useful purpose.)

This case cannot guide me significantly, because the Court, though asking the crucial question, did not examine it in depth, and also because a public train platform can hardly be compared to a contained school setting.

(iv) *Hothi et al. v. R. and Mitchell* , [1985] 3 W.W.R. 256 (Man. Q.B.); (1985) 35 Man. R. (2nd) 159 (Man. C.A.); (1986) 43 Man. R. (2nd) 240 (S.C.C.). This was a criminal case in which the trial judge had refused to allow kirpans in the court room.

> The ruling serves a transcending public interest that justice be administered in an environment free from any influence which may tend to thwart the process. Possession in the courtroom of weapons, or articles capable of use as such, by parties or others, is such an influence. A weapon does not cease to be a weapon because it is a religious symbol subject to strictures of the faith regarding use. (p. 259)

The accused applied for an order of mandamus challenging the trial judge's ruling. The court dismissed the application and, with regard to argument concerning the *Charter of Rights and Freedoms*, held that the limitation of religious freedom was reasonable within the meaning of s.1, in that the public interest took precedence over the accused's desire to carry his religious symbol.

(The judgment was appealed but was not heard by the Supreme Court, without reasons being given therefor.)

I do not believe that the trial Court's decision and its reasoning can be applied to the instant case Courts and schools are not comparable institutions. One is a tightly circumscribed environment in which contending elements, adversarially aligned, strive to obtain justice as they see it, with judge and/or jury determining the final outcome. Schools on the other hand are living communities which, while subject to some controls, engage in the enterprise of education in which both teachers and students are partners. Also, a court appearance is temporary (a Khalsa Sikh could conceivably deal with the prohibition of the kirpan as he/she would on an airplane ride) and is therefore not comparable to the years a student spends in the school system. The case therefore cannot provide a cogent precedent for me.

(v) *R. v. Gurprasad Dhamrait* (May 7,1985) (District Court of Ontario), unreported. In a street fight which resulted in a wrestling match, the accused drew his kirpan and stabbed the other person in the back. The accused had enjoyed an unblemished reputation. Clearly, he was aware of the martial potential of his kirpan and so used it and, as the transcript shows, did so quite skillfully. Mr. Dhamrait was sentenced to four months in jail.

(vi) *R. v. Jatinder Singh* (1990) (District Court of Ontario), unreported. The accused, described by Judge Wren as a Sikh "priest", became involved in a heated dispute in his own home and stabbed another person with his kirpan. He pleaded guilty to the offense. The victim, suffering a collapsed lung, required eleven days of hospitalization, and the injury resulted in his inability to resume his former occupation.

The accused, fifty years of age and, like Mr. Dhamrait, of hitherto unblemished reputation, had enjoyed high esteem in the Sikh community which the judge criticized for supporting the miscreant rather than the victim and went on to say:

> I would note that one could not close one's eyes to the fact that in committing this act the accused not only committed a criminal offence, but within his own community he desecrated the use of a sacred object

> instead of providing the leadership which would be expected of a person of his standing in the community, the priest of...one of the more important temples in the Toronto area. He in fact probably set back the cause for the community in seeking to wear the kirpan in the context of daily life, for example, even in attendance at school or in the working place, and it is within this context that both communities must be assured that the use of the kirpan as a weapon is not to be tolerated in our society.

The sentencing took place while the hearings of the instant case were in progress. Judge Wren sentenced the accused to nine months and placed him on probation for a period of two years, during which time

> the accused will be restricted to use instead of the normal nine inch kirpan, one that he himself has suggested is available, a three inch kirpan which will fulfill the sacred and religious requirements of his faith.

I have considered the latter two incidents carefully but conclude that they cannot and must not cast a permanent shadow over the whole Sikh community which, as I have stressed, deserves the greatest respect for the way it translates religious ideals into daily practice.[21] To be sure, I cannot gainsay that these incidents show that even a Khalsa Sikh may be aware of the kirpan's original function as a weapon, and that this function, though religiously no longer present or acceptable, retains a small degree of actuality. But while these exceptions cannot be overlooked, they are exceptions which must not be used to denigrate the record of Sikhs in Canada which for the past hundred years has been wholly admirable.

(vii) One further case needs to be noted, *Regina v. J.M.G.* (1986), 56 O.R. (2d) 705 (Ontario Court of Appeals). Though it does not deal with kirpans or Sikhs, it does involve an incident which puts the special status of the school into perspective.

At issue was the right of a school principal to search a student suspected of possessing marijuana. The principal required the student to remove his shoes and socks and, while doing so the student attempted to destroy evidence. The

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[21] I cannot comment on why the Sikh community supported Mr. Jatinder Singh and instead ostracized the victim. The circumstances are unknown to me.

principal removed drugs from the student's socks and called the police. The case involved ss. 8 and 10(b) of the *Charter*, as well as provisions of the *Education Act*, c. 129, s. 236(a). The court ruled that the principal's failure to inform the student of his rights did not vitiate the case against him; rather, the principal was judged to have merely performed his duties to maintain proper order and discipline.

> First, the principal has a substantial interest not only in the welfare of other students but in the accused student as well. Secondly, society as a whole has an interest in the maintenance of a proper educational environment, which clearly means being able to enforce school discipline efficiently and effectively. (P. 710)

It would appear, then, that the maintenance of discipline, which might otherwise be deemed a diminution of civil rights and an offense under the *Charter*, may stand because of special circumstances and also because schools are special places. The fact that according to the Divisional Court the *Code* overrides the *Education Act* does not mean that thereby all provisions of the latter are set aside automatically, and especially so c. 235 and 236. Clearly, what applies to the *Charter* in relation to the *Education Act* applies also to the *Code* vis-à-vis the *Act*. School principals are given special rights and duties, and they must be weighed in the light of the *Code*.

(viii) Mention might be made here also of other cases which, while not involving kirpans, deal with Sikhs and their religious rights.

Dashminder Singh Sehdev v. Bayview Glen Junior Schools et al. (1988) 9 C.H.R.R. D/4881; Ont. Bd. of Inq. The respondent schools precluded Sikhs and Orthodox Jews from attending because their head coverings clashed with the dress requirements of the school. The Board ruled in favour of the complainant, even though the schools were privately operated.

Ishar Singh v. Security and Investigation Services Ltd., Ont. Bd. of Inq, May 31, 1977, Prof. Cumming, Chmn., unreported, also was a dress and not a kirpan case. The Board sustained the complainant who refused to shave his beard or remove his turban.

The Supreme Court of Canada's decision in the case of *Bhinder v. C.N.R.*, [1985] 63 N.R. 185. The C.N.R. requested that all persons in the Toronto coach yard wear safety hats. Bhinder, a Sikh, refused to comply. The matter was judged under the*Canadian Human Rights Act*, which allows a defense of *bona fides* but does not, like the Ontario *Code*, require the added qualification of undue hardship. The judgment was released on the same day as *O'Malley*, the latter having been adjudged under the Ontario *Code*. In *Bhinder*, the Court ruled that

the safety hat was a *bona fide* occupational requirement and therefore held in favour of C.N.R.; in *O'Malley*, the Court ruled in favour of the complainant and found that respondent employer should have accommodated the complainant. The conjoint release of the decisions emphasized the different statutes on which they were based.

A decision similar to *Bhinder* was handed down by a tribunal in Britain, in *Singh v. British Rail Engineering Ltd.*, [1986] I.C.R. 22 (Employment Appeal Tribunal); and in the United States, in *Sherwood v. Brown,* 6119 F. (2nd) 1382 (1984)(United States Court of Appeals, Ninth Circuit) rejecting a Sikh's request to wear a turban instead of a helmet while serving in the Navy.

In *Gurnam Singh and the Crown in Right of Ontario, Ministry of Correctional Services,* Grievance Settlement Board, Nov. 6, 1980, the Board held that the requirement to cut one's facial hair was justified "by reference to the need for a person to be clean shaven, in order to create an effective 'seal' round the air mask of the safety equipment." Here the Board ruled that the respondent had shown that it would be an undue hardship to let Mr. Singh carry out his duties...if his capacity to wear protective equipment is diminished. The ruling is significant for the case at bar inasmuch as the Board judged that the respondent had indeed shown that hardship would ensue. No vague reference to possible problems was at issue but a very direct danger to the person.

Similar decisions were rendered in British and American cases: *Panesar v. Nestlé Co. Ltd.*, [1986] I.C.R. 144 (Court of Appeal), and *Manjit Singh Bhatia v. Chevron U.S.A.*, Inc. 734 F. (2nd) 1382 (1984) (United States Court of Appeals, Ninth Circuit..

IV. CONCLUSIONS.

In reaching my conclusions I have constantly kept in mind that we have here a clash of two rights: the religious freedom of Khalsa Sikhs and the right of the Peel Board to establish disciplinary boundaries and to maximize safety in its realm. Put another way, the school must preserve discipline and maximize the safety of students and staff. At the same time it must zealously guard and maintain religious freedom.

1. There having been no incident in any Canadian school of a Khalsa Sikh's misuse of his/her kirpan, the argument that Khalsa students or teachers represent a particular personal risk that must be forestalled is, in my opinion, devoid of any merit.

2. The argument that others might appropriate the kirpan and do harm is also not persuasive. While total safety from irrational and violent behaviour can never be ensured, a kirpan worn under the Sikh's clothing and secured properly (about which more later on) is likely to be obtained only after a considerable struggle. If a person is bent on using a knife for aggression, more easily accessible items are available on most school properties: knives, forks, screw drivers, or cutting instruments from the craft shop. And when it comes to other potential weapons, there is always the ubiquitous baseball bat.

What Respondent has really claimed is that potential non-Sikh aggressors might somehow avail themselves of the kirpan and then vent their spleen on someone. In order to control these non-Sikhs who might be prone to violence is it advisable to curtail the religious freedom of perfectly peaceable persons? For some of them, this might make it impossible to be part of the school system altogether.

That seems to me an unacceptable way of safeguarding students, teachers and staff. It means sacrificing the rights of some of the best elements in the school to the worst. I found it most instructive to learn how, in fact, the Peel system treats proven aggressors and psychotics. I recall here the evidence of Dr. Blackstock, chief psychologist for the Peel Board.

He related the way the Peel system treats students who have a record of violence. If at all possible they are returned to school, though in two cases difficult-to-control offenders are watched by two full-time assistant teachers. (Ev. VII 146-147)

> We have a couple in the Peel system now who we feel are so disturbed and so potentially violent, that we are assigning a teacher's assistant to stand by them every minute that they are in the school system.
>
> We judge it is not safe to allow them unsupervised, even by a distance of ten or fifteen feet. That is just a couple.
>
> There are lot of students who are assigned a behavioural teacher full time, so the behavioural assistant teachers there help them, all the time. There are about 100 of them in the system, to help teachers cope with

> their behaviour, to counsel the kids when they need them....There are about 1,000 of those students in the Peel [secondary school] system. At the elementary level we have..12 classes for the most emotionally disturbed children, about 8 children in each class, there are about 96 kids like that. (Ev. VII 146-147)

Extraordinary measures are thus taken to make sure that psychotic children, proven aggressors and violent students are integrated in the system so that they can attend school. A hundred extra personnel have been engaged to make this feasible. But at the same time it is not deemed feasible by the Board to allow a peaceable, religious, abstemious Khalsa Sikh student to attend any school in the region. Yet the Board could, if that would seem to be warranted, assign someone to make sure that the student does not come to harm, and I would consider this to be at least as good an expenditure of public money as the safeguarding of potentially violent persons, and Respondent could hardly claim that the cost of doing so would create undue hardship in the meaning of s. 10(2). If society wants to protect the law abiding above all, then, in my view, Khalsa students ranks high on the list of those to be protected.

I do not criticize the Board for trying to rehabilitate the violent and others in need of special help, quite on the contrary. But to do this while excluding a religious student creates an unacceptable imbalance.

For these reasons I do not deem Policy # 48, which contains section 14 referring to Sikhs and kirpans, as reasonable within the meaning of s. 10(1) of the Code -- even though it was enacted in good faith. *Bona fides* cannot alone discharge the onus of defense when prima facie discrimination has taken place, as in the instant case. Therefore the defenses of undue hardship and safety do not avail, for they apply only when the infringement of the Code is both *bona fide* and reasonable. Withouth the latter, s. 10(2) is not applicable.[22]

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[22] It should be noted that support for Peel was expressed by the Ontario Public School Boards Association. Though its members have not introduced in their own regions he kind of policy decided upon by the Peel Board, they have nonetheless given their endorsement to the latter and written a letter to that effect (Exhibit 20). In reading that missive I was astonished to find that it recommended that students who insist on wearing their kirpan be given home instruction. Why would the OPSBA want to keep Khalsa Sikhs out of their schools while registering no objection to the continued school admittance of students with a record of asocial behaviour?

3. If I am wrong, however, on this point I will proceed to postulate that the Policy might be called reasonable, thus allowing for the defense of undue hardship, in that the kirpan policy was designed to maximize safety in the school system. The question then would be whether the rising climate of violence in our society and the purported increase of violence in our schools justify every precaution, even though it be at the expense of a few.

a. A good many citizens have reacted vigorously to the idea that a Sikh student might be allowed to carry what appears to be a knife, when no one else is given that right. It is, after all, this concern which has moved the Peel Board in the first place to adopt its exclusionary policy. However, the legal remedy must fit the perceived danger and fulfill the requirement of the law, and even if one were to consider the Peel Policy to be reasonable within the meaning of s. 10(1) it would not meet the standard of undue hardship under s. 10(2).

For the evidence presented to me was singularly incapable of proving that more than a vague risk exists when kirpans are admitted into the school system. The reasons have already been adumbrated, but it seems important to reiterate them here.

No incident of kirpan-related violence has ever happened in any school system. Still, the Peel Board wants to be pro-active, it does not want to wait until kirpans are misused. Though it cannot assure the absence of violence, it sees it as its responsibility to minimize it. If no kirpans are present, then no one will misuse a kirpan for violent action, and one more element of risk will have been eliminated.

That argument is logically incontrovertible, but inconsistent. For why does the Policy single out kirpans and not exacto blades used in the craft shop, or baseball bats which are ubiquitous? I need to be convinced that, while elsewhere the prohibition of kirpans has been found unnecessary, it is nonetheless necessary for Peel to adopt, and that not adopting it would be an undue hardship, that is, "out of proportion" to its ordinary and accepted obligations (see the definition of undue hardship in *Stroud's*, quoted *supra*).

In Peel's view the absence of a kirpan policy in other school jurisdictions is shortsighted and wrong. Respondent sees itself in this matter as breaking new ground for safety and minimizing risks of violence.

But the problem is that in doing so it runs afoul of the constitutional right of Khalsa Sikhs to religious freedom, which is enshrined in the *Code*. Respondent would have to show that the climate of violence in its own schools is such that this freedom needs to be abridged, but that proof was not available. Before I could consider accepting the view of the Peel Board that, although all the Boards in Ontario seemed to function adequately without a Policy # 48, it was advisable and necessary for Peel to institute it and thereby exclude observant Sikhs. That need, as I have indicated before, was not demonstrated.

b. To be sure, when violence, even potential violence, reaches a certain level of danger, restrictive measures of various kinds may be necessary, and in the process certain conditions might be temporarily imposed on kirpan wearers. But in my view Peel has not shown that in its region this level currently exists in any measurable form. No evidence has been introduced that would prove Peel to be a more violent environment than all other school regions adjoining it, or that its heightened apprehensions of danger are founded on concrete facts.

c. However, having concluded that Discipline Policy # 48 as it stands infringes the *Code*, I am not thereby denying the continued responsibility of the Board to maximize safety in its system, a system that is very large and no doubt includes socially differentiated areas. The preamble to its Policy makes this unmistakably clear:

> The Region of Peel by necessity has a large number of schools. Each school with separate administration and staff may differ with respect to discipline to some extent.

With the school population soon approaching the 100,000 mark there will be areas in which no apprehension of heightened violence exists and areas where it might. The best persons to assess the climate in their own schools are the principals upon whom the direct responsibility for safety devolves by law and practice. Should a principal find that his/her particular school exhibits signs of heightened unrest, violence, or other social disturbance, it would be his/her right

to take adequate and hopefully temporary counter-measures. For principals, in consultation with their superiors, will have the responsibility for tailoring safety measures to the level of each school's needs.

Given the large and variegated nature of the Peel system, a wholesale approach might work in some areas but might not meet the needs of others. Where it touches upon a particular segment of the community, such as Sikhs, only a very clearly defined situation -- which is best determined on an individual school level -- might render special measures defensible. Such individuation will make for both greater flexibility and equity.

The Commission itself has recognized this need and has therefore proposed that, while the right to wear the kirpan should itself be inviolate, it be accompanied by certain safety measures which principals could monitor. Thus the kirpan should be of reasonable size,[23] be worn under one's clothing, and be well secured to the guthra. I have incorporated these limitations into my Order.

d. I have up to this point addressed only the legal status of Policy # 48 in its present form. In addition, the Policy is also so poorly worded as to give patent offense to Sikh students, singling them out for special attention and implied opprobrium, a situation that was acknowledged by the Board's sole multicultural officer. Regrettably, the offending portion of Policy #48 is already reprinted in the 1990/91 *Handbook*, ready for distribution in the fall. The Board must therefore find some means of correcting this misadventure.

Order.

1. By adding the amendment dealing with Sikhs and kirpans to Policy # 48 the Peel Board has infringed the *Code*, and therefore that portion of both the Policy and the *Handbook* must be withdrawn.

2, The Board shall make available such funds as will assist principals in safeguarding both the legitimate exercise of religious freedom and the safety of all students, teachers and staff.

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[23] What is "reasonable" in this instance has been discussed in *Pritam Singh, supra*, D/468, at ¶ 4223. A maximum size of 7 inches for the total kirpan (hilt, blade and sheath) is suggested as the acceptable norm, but smaller kirpans may be available and would be preferable.

3. Khalsa Sikhs, be they students, staff or teachers, shall be entitled to wear their kirpans to school. When they do, they shall observe certain limitations:

a. School kirpans shall be of reasonable size (see *supra* at footnote 23).

b. They shall not be worn visibly, but under the wearer's clothing.

c. They shall be sufficiently secured so that removal, while not impossible, shall be rendered difficult.

4. Principals shall have the right to

a. ascertain, if they deem it advisable, whether the above limitations have been observed;

b. institute such program modifications for kirpan-wearing students as are deemed advisable;

c. suspend the right to wear the kirpan if it has been misused by the wearer.

5. If a principal concludes that in his/her school the level of violence is rising or has risen dangerously, and that special measures are needed to counter this trend, he/she will so inform the superior or superiors assigned to such tasks. If it the latter find that the principal's apprehensions are justified, they may order temporary measures which might impact also on Khalsa Sikhs. But such restrictions shall not go beyond what is reasonable and justifiable under the circumstances.

6. Mr. Pandori may without hindrance seek employment in Peel.

No damages were asked and none are awarded.

Toronto, July 6, 1990

BOARD OF INQUIRY